

Application No.: 10/511,024

Docket No.: JCLA14658

REMARKS

This is a full and timely response to the outstanding nonfinal Office Action mailed 05/16/2008. Applicants have amended claims 1-3, 8 and 14. Applicants have also amended the specification. Reconsideration and allowance of the application and presently pending claims 1-9 and 14 as are respectfully requested.

Currently, claim 1-5 are generic and claim 6 is withdrawn from consideration. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim as provided by 37 CFR 1.141.

Specification

Applicants have amended the specification with canceling the word "claim" and its number. Applicants also amended the specification with adding spaces between words. In addition, the word "tee" is amended into "tea".

Claim Objections

Claims 1-3 and 8 and 14 were objected to because of informalities as indicated by the Examiner.

In response thereto, Applicants have amended claims 1-3 and 8 and 14 as suggested by the Examiner. As such, Applicants submit that claims 1-3 and 8 and 14 are now in allowable forms.

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Discussion of Office Action Rejections

The Office Action rejected claims 1-5, 7-9 and 14 under 35 U.S.C. 112, 1st paragraph as failing to comply with the written description requirement. Applicant respectfully traverses the rejections for at least the reasons set forth below.

The Examiner stated the claims 1 are drawn to "A tea comprises extracts obtained from " in claims 1, 2, 4, 5, 8-9 and "extracts obtained from....." in claims 8-9 and 14. However, applicants are merely stating that these components are raw materials for the respective extracts and are not describing the actual extract itself. Applicants are not describing what applicants regard as the extract but rather how the extract can be used, which is not the same thing as how to obtain the extract or what the extract is. Furthermore, applicants do not provide any method of making or obtaining the extracts claimed and disclosed in the specification.

Applicants respectfully submit the method for making or obtaining the extracts is well-known to the one skilled in the art. For example, in reference 1 "Comparative Study on Methods of Boil and Extract of Chinese Material Medica, Lu Yuqi etc., vol. 11, No 4, pages 1-7 (1995)", the method for making or obtaining the extracts is described. In particular, the method for obtaining the extracts from raw materials can be one-step decocting method or two-step decocting method (see page 2, sections 2.1-2.2). Similarly, in reference 2, published in vol. 21, No 6, pages 23-26 (2002), the decocting method is also used to obtain the extracts from herb raw materials. Moreover, in reference3, published in Zhejiang Zhongxlyl Jiehe Zazhi Zhejiang Journal of Integrated Traditional Chinese and Western Medicine, Vol. 9, No. 4, pages 230-231 (1999), the extracts from raw materials can be soak method or immersion method (see section 1.2).

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For the foregoing, the methods for making or obtaining the extracts, which can be decocting method, soak method or immersion method, are well known to the people skilled in the art.

In addition, the Examiner pointed out the specification just describes the herb raw materials but not actual extract itself, and thus people skilled in the art would not recognize from the disclosure that applicant was in possession of the genus of what constitutes "extracts".

Similarly, applicants respectfully submit from the references shown, one skilled in the art can understand what are the extracts or what are the extract contents from the description of "extracts from herbs (such as lightyellow sophora root and isatis leaf)".

The written description requirement generally requires the applicant to describe the invention to one skilled in the art **but not every last detail is to be described**. According to MPEP 2163 Determine Whether There is Sufficient Written Description to Inform a Skilled Artisan That Applicant was in Possession of the Claimed Invention as a Whole at the Time the Application Was Filed, applicants respectfully submit claims 1-5, 7-8 and 14 have complied with the written description requirement.

Claims 1-5, 7-9 and 14 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Applicant respectfully traverses the rejections for at least the reasons set forth below.

The Examiner stated applicant does not provide guidance in the specification as to how to make the exemplified drinkable tea in the form of powders or granules. However, applicant

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respectfully submits the method of making the exemplified drinkable tea in the form of powders or granules is well-known to the one skilled in the art. The method to make the exemplified drinkable tea in the form of powders or granules can be decocting method, such as described in reference 4, which is downloaded from:

<http://www.med66.com/html/ziliao/07/34/3ad9b2048e580655c901c44e06d9dd69.htm>.

According to MPEP 2164, "the purpose of the requirement that the specification describe the invention in such terms that one skilled in the art can make and use the claimed invention is to ensure that the invention is communicated to the interested public in a meaningful way. However, to comply with 35 U.S.C. 112, first paragraph, it is not necessary to **"enable one of ordinary skill in the art to make and use a perfected, commercially viable embodiment absent a claim limitation to that effect."** CFMT, Inc. v. Yieldup Int'l Corp., 349 F.3d 1333, 1338, 68 USPQ2d 1940, 1944 (Fed. Cir. 2003)." Applicants respectfully submit claims 1-5, 7-8 and 14 have complied with the Enablement Requirement.

Claims 1-5, 7-9 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses the rejections for at least the reasons set forth below.

The examiner pointed out claims 1-5, 7-9 and 14 are not clear as to what applicant consider "extracts" to be. As above mentioned, the method for making or obtaining the extracts is well-known to the one skilled in the art, and claims 1-5, 7-8 and 14 have complied with the written

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description requirement. In addition, in reference 5, YIWEI ZHONGYAO QU WANJI, the first version is published in 1995, shows the extracts obtained from lightyellow sophora root and isatis leaf. The extracts obtained from lightyellow sophora root contains bioalkali, d-matrine, d-oxyma-trine, d-sophoranol, l-anagyrine, l- methylecysine, l-baptifoline, l-sophocarpine, N-oxysophocarpine, l-ethylsophoramine, sophoridine, isokurarinone, norkurarinone, kuraridin, kutstinol, kuraridinol, neokurarinol, norkurarinol, noranhydroicaritin, isoanhydroicaritin, xanthohumol, isoxanthohumol, and trifolirhizin, l-maackiain- β -D- glucoside. Additionally, the extracts obtained from isatis leaf contains O-aminobenzoic acid, quinazolinone, flavonoid, indigo, lutein, anthraquinones, tryptophan, Isatan B, glucobrassicin, neoglucobrassicin, glucobrassicin-1-sulfonate, Indoxyl, indirubin, tryptanthrin, and L-pyroglutamic acid.

Therefore, the compositions of "extracts" in claims 1-5, 7-9 and 14 are well known and clear to the people skilled in the art.

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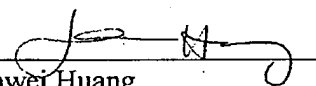
CONCLUSION

For at least the foregoing reasons, it is believed that the pending claims are in proper condition for allowance and an action to such effect is earnestly solicited. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

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4 Venture, Suite 250
Irvine, CA 92618
Tel.: (949) 660-0761
Fax: (949)-660-0809

Respectfully submitted,
J.C. PATENTS


Jiawei Huang
Registration No. 43,330